IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No. 842 of 2006
Date of decision : 30.11.2006.

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Parties Name

Smt. Anaro Devi

..... Petitioner

vs.

Jatinder Singh and others

.....Respondents

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Ashok Aggarwal, Senior Advocate with
Sh. Mukul Aggarwal, Advocate for the petitioner.

Sh. M.L. Sarin, Senior Advocate with
Sh. Hemant Sarin, Advocate for the respondents.

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S.N. Aggarwal, J.

Tota Ram was admittedly the owner of the suit property. Anaro Devi – petitioner is the daughter of said Tota Ram. Said Tota Ram had a brother namely, Ranjit Singh. Kartar Singh respondent No.3 is the son of said Ranjit Singh, while Jatinder Singh and Zile Singh respondents No. 1 and 2 are the sons of Kartar Singh-respondent No.3. Said Tota Ram died on 22.8.2002. Anaro Devi-petitioner filed a civil suit for declaration that she was the owner of the suit property left by her father Tota Ram. She also prayed for its possession and for injunction seeking to restrain the respondents from alienating the suit property etc. She also challenged the legality and validity of the Will dated 21.3.1995 allegedly executed by said Tota Ram in favour of respondents No. 1 and 2. She also challenged lease

deed dated 15.12.1999 and the Civil Court decree dated 1.8.2000 allegedly suffered by said Tota Ram in favour of the respondents.

Respondents filed the written statement and contested the suit. Legal objections were also pleaded. On merits, it was pleaded that Tota Ram had executed a valid Will dated 21.3.1995 and lease deed dated 15.12.1999. A decree was also suffered by Tota Ram on 1.8.2000 in favour of respondents No. 1 and 2. Another decree was suffered by said Tota Ram on 7.8.1999. The petitioner was fully compensated by her father by giving her properties and cash amount. Hence, dismissal of the suit was prayed.

An application for interim stay was filed by the petitioner seeking to restrain the respondents from alienating the suit property during the pendency of the civil suit. The learned trial Court by passing the detailed order dismissed the said application vide order dated 19.12.2005 by holding that the necessary constituents for granting the interim relief were not made out. The petitioner filed an appeal. It was observed by the learned Lower Appellate court that interest of the plaintiff (petitioner) is fully protected as any alienation of the property during the pendency of the civil suit will be hit by the doctrine of *lis pendens*. The said appeal was dismissed by the learned Lower Appellate Court vide order dated 7.1.2006.

Hence, the present petition.

The first submission of the learned counsel for the respondents was that all the persons who were parties in the civil suit are not made parties in this revision petition and, therefore, either the revision petition should be dismissed or all the defendants in the civil

suit be impleaded as respondents in this revision petition. This contention was met out by the learned counsel for the petitioner by pleading that during the pendency of the suit, the respondents have alienated a part of the suit property and only the subsequent vendees have been impleaded and that too after the filing of this revision petition. Originally, the petitioner was the plaintiff and the respondents were the defendants in the civil suit. Therefore, the technical objection taken by the learned counsel for the respondents is of no consequence.

Admittedly, Tota Ram was the owner of the suit property. The petitioner is the daughter of said Tota Ram, while the respondents being the nephew and nephew's sons of said Tota Ram have got the property from Tota Ram by virtue of Will, lease deed or the consent decree. The legality and validity of these documents has been challenged in the civil suit out of which this civil revision petition arises. It is yet to be determined after both the parties lead their evidence and the matter is examined in its proper perspective as to how the natural succession of Tota Ram has been diverted whether in accordance with law or otherwise. Till these issues are decided, the property obtained by the respondents from Tota Ram has to be preserved.

The submission of the learned counsel for the respondents was that the rule of *lis pendens* would take care of any alienation made by the respondents and, therefore, there is no need for the grant of specific stay order against alienation.

In this context, reference may be made to the judgment of the

Hon'ble Supreme Court reported as **Maharwal Khewaji Trust (Regd.) Faridkot vs. Baldev Dass** 2004 (4) RCR (Civil) 760, in which also the learned District Judge had observed that alienation, if any, will be subject to the law of *lis pendens*. But the Hon'ble Supreme Court was pleased to observe as under :-

> "9. Be that as it may, Mr. Sachhar is right in contending that unless and until a case of irreparable loss or damage is made out by a party to the suit, the court should not permit the nature of the property being changed which also includes alienation or transfer of the property which may lead to loss or damage being caused to the party who may ultimately succeed and may further lead to multiplicity of proceedings."

The rule of *lis pendens* only means that any alienation made by a party to the civil suit during the pendency of that suit, will be hit by the rule of *lis pendens* and would not be legal and binding on the plaintiff of that civil suit. It would mean, therefore, that if an alienation is made by the respondents, then the petitioner would again be required to take out legal proceedings against the transferees who purchased during the pendency of the civil suit. It will not only multiply the litigation but would also prove expensive for the petitioner. The involvement of the rights of the third party would also complicate the litigation and many new issues would come up for decision. The rights of the plaintiff turned decree-holder would be clouded while the defendants turned judgment-debtors would enjoy the fruits of the sale proceeds of the sales effected during the

pendency of the civil suit. Therefore, the rule of *lis pendens* does not serve the purpose in real sense. It would be in the interest of justice to restrain the respondents from making any alienation during the pendency of the civil suit or till the lis is decided by the Judicial Courts.

Learned counsel for the respondents had made reference to the judgment of the Hon'ble Supreme Court reported as **Managing Director (MIG) Hindustan Aeronautics Ltd. Balanagar Hyderabad and another vs. Ajit Prasad Tarway, Manager (Purchase and Stores), Hindustan Aeronautics Ltd, Balanagar, Hyderabad** AIR 1973 Supreme court 76, in support of his submission that this Court should not interfere with the orders passed by the Courts below because both the Courts below have held that the necessary constituents for the grant of interim stay are not made out. Reference was also made to the judgment of this Court reported as **Dharamvir vs. Naresh Kumar and others** (2005-1) PLR 527. This judgment also lays down that this court would interfere only in those cases where there is manifest injustice caused to a party invoking the jurisdiction.

In the present case, the petitioner is the natural legal heir of Tota Ram. The property was to come to the petitioner by way of natural succession. Respondents have set up the Will, lease deed and consent decree. They are not the legal heirs of said Tota Ram. The petitioner being the daughter of Tota Ram had challenged all these documents by filing the civil suit. By the documents set up by the respondents, the natural course of succession has been diverted. If

tomorrow, the petitioner succeeds in proving her case, the property which was once owned by her father Tota Ram would just be transferred by the respondents from their own hands and it would create legal complications for the petitioner, as discussed above. It is already admitted by the respondents that they have already sold a part of the suit property to a third person, who has now become a defendant in the civil suit. Therefore, it would be in the interest of justice to safeguard the property which the respondents have allegedly obtained from Tota Ram by these documents pleaded in the written statement. If it is not so done, the petitioner would suffer an irreparable loss and would lead to miscarriage of justice.

On the other hand the grant of stay will not cause any prejudice to the respondents. Rather it would keep the property in tact in their hands till the decision of the civil suit. It is also not brought to the notice of this Court if the respondents would suffer any loss or damage, if so how.

In order to safe guard the interests of the respondents and to ensure that the respondents are not made to wait for a long time, the learned trial Court is directed to decide the suit expeditiously, preferably within a period of two years from the next date fixed in the learned trial Court.

However, anything said in this order, shall not affect the merits of the case.

(S.N.Aggarwal)
Judge

30.11.2006.
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